

REMARKS

Claims 1-35 are presently pending. Claims 3-4, 6-20, and 26-35 were objected to but indicated as allowable. Assignee appreciates Examiner's indication of allowable subject matter.

Claims 1, 2, 5, and 21-25 were rejected on the grounds of nonstatutory obviousness-type double patenting from claims 1, 2, 6, 12, 14, and 15 of U.S. Patent Application Serial No. 11/311,459 (the '459 application). However, the '459 application still pending. Accordingly, Assignee respectfully traverses the rejection, because an actual (as opposed to provisional) obviousness-type double patenting rejection cannot be issued because the '459 application has not issued as a patent. See MPEP 804, Chart I-B.

The '459 application was filed 12/19/2005, and is a continuation in part of the present application (filed 10/22/2003), which is a continuation in part of 09/963,345 (filed 9/26/2001), which is a continuation in part of 09/861,086 (filed 5/18/2001).

"If a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

If both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be

withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer."

MPEP 804.I.B.1.

Examiner has indicated that claims 1-2, 5, and 21-25 "merely broaden the scope of the claims 1, 2, 6, 12, 14, 15 of [the '459 application]", i.e., the present application is the base application, Assignee respectfully submits that "The ODP rejection in the base application can be withdrawn without a terminal disclaimer".

Accordingly, Assignee respectfully traverses the double patenting rejection and requests that Examiner withdraw it.

CONCLUSION

For at least the foregoing reasons, Assignee respectfully submits that each of the pending claims are allowable and Examiner is respectfully requested to pass this case to issuance. The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Dated: October 17, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mirut Dalal', written over a horizontal line.

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